IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.126 of 2007

The Commissioner of Income Tax
Chennai. .. Appellant

versus

Mrs.S.S.Kaladevi .. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench , dated 9.6.2006 made in IT(SS) A.No.61/Mds/2004 - Block Assessment Period: 1991-92 to 2000-01 + broken period and against the order of the Commissioner of Income Tax (Appeals) I Chennai-34, dated 5.3.2004 made in ITA.206/02-03 against order dated 31.1.03 of the Deputy Commissioner of Income Tax Central Circle-II Madurai made in GIR .No. K.7001.

For appellant : Mr.J.Naresh Kumar for
M/s.Pusya Sitaraman
Standing Counsel

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J.)

The appeal is by the Revenue seeking admission of the Tax Case based on the following substantial question of law:

" Whether in the facts and circumstances of the case, the Tribunal was right in holding that if income from a particular year is below taxable income, the same cannot be included in block assessment, even in cases where no books of accounts or other documents were maintained? "

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2. It is seen that a search took place in the case of the assessee's husband on 5.1.2001. It is further stated that a perusal of the seized materials and statements recorded from the assessee and connected persons revealed that the assessee had derived undisclosed income liable to be taxed in a block assessment. Consequently, notice was issued under Section 158 BD read with Section 158 BC, calling upon the assessee to file the returns of the income in Form 2B for the block period 1.4.1991 to 5.1.2001 relevant for the Assessment Years 1991-92 to 2000-01 and 2001-2002 (part). Rejecting the contention of the assessee, the Assessing Authority arrived at the total undisclosed income at Rs.5,28,470/- as against the declared income of Rs.2,44,435/-.

3. Aggrieved by the assessment, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). Considering the retrospective effect given to the provisions of Section 158B(b) under the Finance Act of 2002 with effect from 1.7.1995, the appellate authority directed the assessing authority to call for specific details from the appellant as regards the claim for deduction under Section 80L and pass necessary orders thereon. The appellate authority rejected the contention that there was no undisclosed income. However, the appellate authority partly allowed the appeal.

4. Aggrieved by this order, the assessee went on further appeal before the Tribunal. The Tribunal held that the assessing officer had included the income earned in the assessment year 1991-92 to 1996-97 on the ground that the returns of income were not filed. The Tribunal also referred that Section 158 BB(1)(c) was inserted with effect from 1.7.1995, according to which, the income which does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period, shall be reduced from the aggregate of total income of the previous years falling within the block period; set aside the order and remitted the case back to the assessing officer to verify the income not chargeable to tax for the previous years which were included in the block assessment. The Tribunal also held that the assessing authority had not mentioned anything about the method of accounting followed by the assessee. In the circumstances, the Tribunal remanded the matter back for fresh consideration, directing the assessing authority to consider the issue as regards the method of accounting employed by the assessee.

5. Aggrieved by the remand order, the Revenue has come on appeal. Learned Standing Counsel submitted that the Commissioner of Income Tax (Appeals) held that the assessee had not maintained any Books of Accounts and as such, not entitled to any relief; considering the amendment made retrospectively to the provision under Section 158B(b) and Section 158BB (1)(c) of the Income Tax Act.

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6. Learned Standing Counsel submitted that the Tribunal erred in overlooking the provisions that the question of exclusion of the income below the taxable limit will arise only where the assessee maintains the Books of Accounts. He submitted that since in the present case no books of Accounts are maintained, the said Clause would not be applicable to this case.

7. Without going into the other aspects of this matter, it may be seen that the assessee's contention before the authorities below was that since the income for the period upto 5.1.2001 were only from salary income and income from house property and below the taxable limit, the question of denying the relief did not arise. The authorities below had taken the view that considering the provisions of Section 158 BB(1)(c), the relief of exclusion was available only for the income as reflected in the regular Books of Accounts maintained before the date of search. Considering the fact that the income undisclosed was below the taxable limit and having regard to the fact that the matter is remitted by the Tribunal for verification of the same in terms of Section 158BB(1)(c), we confirm the order of the Tribunal remanding the matter, for the assessing authority to consider the claim of the assessee de novo and pass orders in accordance with law. In the circumstances, we do not find any ground to admit this appeal. Accordingly, this appeal is dismissed. There will, however, be no order as to costs.

ksv

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To:

1. THE COMMISSIONER OF INCOME TAX
CHENNAI.

2. THE ASSISTANT REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
MADRAS C BENCH BESANT NAGAR, CHENNAI-34.

3. THE COMMISSIONER OF INCOME TAX
(APPEALS) II CHENNAI.

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4. THE COMMISSIONER OF INCOME TAX
(APPEALS)I CHENNAI-34.

5. THE DEPUTY COMMISSIONER OF
INCOME TAX CENTRAL CIRCLE II,
BIBI KULAM, MADURAI-2

+ One cc to M/s. Pusya Sitaraman Advocate SR 11538
KM (co)
sg 16/3/07

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